IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.Rev.Pet.No. 3724 of 2007()

CRA.443/2002 of SESSIONS COURT, THALASSERY
CC.18/2002 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

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REVN. PETITIONER: APPELLANT/ACCUSED:

N.V. CHACKO, AGED 56 YEARS,
NEDIYAKALAYIL HOUSE, CHEMPATHOTTY POST,
SREEKANDAPURAM, KANNUR.

BY ADV. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS: RESPONDENT/COMPLAINANT/STATE:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. VARGHESE K.T., S/O. THOMAS,
AGED 55 YEARS, CHEMPATHOTTY P.O.,
KAICHARAMATH HOUSE, SREEKANDAPURAM.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3724 OF 2007

Dated this the 18th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.18/2002 on the file of the Additional CJM, Thalassery challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause

(b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

The definite case of the revision petitioner/accused is that he had entrusted a signed blank cheque with the accused in the year 1995 while he borrowed a sum of Rs.10,000/- and he had discharged the liability thereunder in the year 1995 itself. The case of the complainant that the accused borrowed Rs.50,000/- under Ext.P1 cheque in the year 2001 is false. The complainant examined as PW1 had admitted in unmistakable terms that he had seen the accused filling up the cheque and affixing his signature. This will go to show that according to PW1, it was not a blank cheque which was handed over to him. The revision petitioner had filed an application before the trial court for sending the cheque to the handwriting expert to check whether the handwriting in the body of the cheque as well as the signature were of the same person. That request was rejected and the lower appellate court has also failed to consider these aspects of the matter.

When the signed blank cheque was offered only as a security without any express or implied authority given to PW1 to fill up the same, no prosecution would lie on the basis of the said cheque.

5. I am afraid that I cannot agree with the above submissions. It is true that PW1 has deposed after more than one year of the handing over of the cheque that the accused had filled up the cheque as well as affixed his signature to the same in his presence. But then the courts below did not believe the explanation offered by the accused as to how the cheque leaf belonging to the accused and pertaining to the account maintained by him came into the hands of the complainant. His definite case in this behalf was that he had borrowed a sum of Rs.10,000/- from the complainant in the year 1995 and had given a signed blank cheque as security. He claims to have repaid the loan in the year 1995 itself. If that were true, then, as a reasonable and prudent man, he should have demanded the cheque back. There is nothing forthcoming to indicate that he had demanded the cheque back. He does not appear to have even sent a lawyer notice to the complainant for his failure to return the cheque leaf even after the accused discharging his liability under the loan transaction.

Even if the handwriting other than the signature in Ext.P1 cheque does not belong to the accused, it must be inferred that he had given implied authority to the complainant to fill up the same and use the same. I see no illegality in the refusal by the trial court to send the cheque to the handwriting expert for comparison. I am fortified in this connection by the decisions reported in ***Francis Vs. Pradeep*** [2004 (2) KLT 1080] and ***Baby Thomas Vs. T.T. Paul and another*** [2007 (3) KHC 732]. Hence reliance placed on ***K.G.Bindu Vs. P.Sreekantan Nair and another*** [2007 (1) KLD Crl. 104] cannot go to the rescue of the revision petitioner. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence

imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.50,000/- (Rupees fifty thousand only) within three months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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